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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-180

GATEWAY CENTER CORPORATION, *Petitioner*

and

ROBERT L. KUNZIG, Administrator, General Services Administration, A. J. SAMPSON, Commissioner, Public Building Service of the General Services Administration, L. M. SHIPP, JR., Assistant Commissioner, Space Management of the General Services Administration and the GENERAL SERVICES ADMINISTRATION, of the United States of America,

v.

JOHN W. MERRIAM, *Respondent*

Reply Brief In Answer To Respondent's Brief In Opposition

DAVID F. MAXWELL

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

THE LEGAL INTELLIGENCER, 66 NORTH JUNIPER STREET, PHILA., PA. 19107

In his jurisdictional statement, the respondent in opposition, John W. Merriam, challenges the petitioner's right to file its petition for certiorari in this Court. Plaintiff maintains that the petitioner, Gateway Center Corporation, is not a "party" within the meaning of 28 U.S.C. §1254(1), a Statute which confers jurisdiction upon this Court to review decisions of the various Courts of Appeals.

> "[b]y writ of certiorari granted upon the petition of *any party* to any civil or criminal case, before or after rendition of judgment or decree . . . [Emphasis added.]"

In his brief, respondent does admit that the petitioner, Gateway Center Corporation, has intervened in this case, and he did include Gateway's Motion to Intervene (A. 33a, et seq.) and answer (A. 36a, et seq.) in his supplemental appendix. However, respondent in opposition neglected to include the stipulation, signed by his counsel, as well as counsel for the federal defendants, in which it was agreed that the general intervention of Gateway Center Corporation was unopposed. An examination of Judge Hannum's order in the District Court demonstrates that, despite the contrary allegations in the jurisdictional statement of respondent in opposition, no conditions were attached to Gateway's intervention. The petitioner has included a copy of both the stipulation of counsel (p. 4) and the order of the District Court (p. 5) in its supplement to the appendix.

Therefore, the contention of respondent in opposition that petitioner is not proper "party" is clearly erroneous: 28 U.S.C. §1254(1) states that "any party to any civil or criminal case" may obtain review upon petition for certiorari. In *Commercial Electrical Supply Co. v. Curtis*, the Circuit Court of Appeals held that a party was bound by an order rendered just before his intervention, since he failed to appeal that order:

> "[i]t is the general rule that one who voluntarily intervenes in a suit in equity thereby becomes a party to the suit, is in the same situation, bound by the same orders and decrees, and subject to the same estoppels, as though he had been a party from the commencement thereof." 288 F. 657, 659 (8th Cir. 1923); 152 U.S. 590, 14 S. Ct. 693, 38 L. Ed. 563 (1893).

Furthermore, the petitioner is a party truly "affected" by the decision of the Court of Appeals, and it is therefore "aggrieved" since that order is erroneous. Certainly the petitioner is at least as "affected" by the Court of Appeals decision to reverse the summary judgment granted to the defendants in the District Court as were the federal defendants, since the respondent in opposition seeks to deprive petitioner of its primary tenant. Indeed, the petitioner is more "affected" by the Court of Appeals decision than are the federal defendants, since it may not be able to immediately obtain new tenants, whereas the federal agencies could obviously be moved from the Gateway Building to other offices.

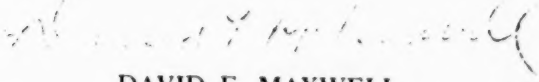
Indeed, the petitioner's situation is similar to that presented in *Norman's on the Waterfront, Inc. v. Wheatley* (3d Cir. 1971), 444 F.2d 1011, where an out-of-state liquor distributor seeking to penetrate the local market contended that the state fair trade law violated the antitrust statutes and successfully enjoined state officials from enforcing the fair trade law. Circuit Judge Adams permitted an appeal by local liquor distributors who intervened after the injunction was granted:

> "Norman's contends the intervenors have no standing to appeal because no relief was sought or granted against them. By its terms, the District Court's order enjoined only the Board of Alcoholic Beverages and its chairman. However, this fact alone does not necessarily preclude the intervenor's appeal. Fishgold v. Sullivan Drydock & Repairs Corp.,

328 U.S. 275, 66 S. Ct. 1105, 90 L. Ed. 1230 (1946). According to one leading commentator, "[t]he intervenor, once intervention has been allowed, has the right to appeal from all interlocutory and final orders which *affect* him" (Emphasis added). Put another way, "[o]ne who has become a party by intervention . . . is entitled, *if aggrieved*, to appeal" (Emphasis added). 444 F.2d 1011, 1013 (3d Cir. 1971); see also 9 Moore's Federal Practice §203.06.

So too, in this case, Petitioner, Gateway Center Corporation, clearly has standing, under 28 U.S.C. §1254(1), to file this Petition for Certiorari in the United States Supreme Court.

Respectfully submitted,



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IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 71-2262

JOHN W. MERRIAM

v.

ROBERT L. KUNZIG, Administrator,
General Services Administration,
A. J. SAMPSON, Commissioner,
Public Building Services of the
General Services Administration,
L. M. SHIPP, JR., Assistant Commissioner, Space Management of the
General Services Administration and
The GENERAL SERVICES ADMINISTRATION
of the United States of America

STIPULATION OF COUNSEL

It is hereby stipulated that counsel for the Plaintiff and counsel for the Defendants consent to the intervention of GATEWAY CENTER CORPORATION as a party Defendant in the above-entitled action.

STRADLEY, RONON, STEVENS & YOUNG

By:
United States Attorney

By:
J CLAYTON UNDERCOFFLER, III, ESQUIRE
First Assistant United States Attorney,
Counsel for Defendants

Date: June 26, 1973

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General Services Administration and
the GENERAL SERVICES ADMINISTRATION
of the United States of America

ORDER

AND NOW, to wit, this 28th day of June, 1973, it is hereby ORDERED that Gateway Center Corporation be permitted to intervene as a party Defendant in this action.

BY THE COURT:

J.

Dated: